

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 9th day of August, two thousand and six.

PRESENT:

HON. GUIDO CALABRESI,  
HON. SONIA SOTOMAYOR,  
HON. BARRINGTON D. PARKER,  
*Circuit Judges.*

Zhen Tong Weng,

*Petitioner,*

-v.-

No. 05-4656-ag  
NAC

Alberto R. Gonzales,

*Respondent.*

FOR PETITIONER: Michael Brown, New York, New York.

FOR RESPONDENT: Charles T. Miller, United States Attorney, Fred B. Westfall, Jr.,  
Assistant United States Attorney, Charleston, West Virginia.

UPON DUE CONSIDERATION of this petition for review of the Board of Immigration Appeals ("BIA") decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the

1 petition for review is GRANTED, the BIA’s order is VACATED, and the case is REMANDED  
2 for further proceedings consistent with this opinion.

3 Zhen Tong Weng, a citizen of China, petitions for review of the BIA’s order affirming  
4 Immigration Judge (“IJ”) Alan Vomacka’s decision denying Weng’s claim for asylum,  
5 withholding of removal, and Convention Against Torture (“CAT”) relief. We assume the  
6 parties’ familiarity with the underlying facts and procedural history of the case.

7 When the BIA issues an opinion that fully adopts the IJ’s decision, this Court reviews the  
8 IJ’s decision. *See, e.g., Chun Gao v. Gonzales*, 424 F.3d 122, 124 (2d Cir. 2005); *Secaida-*  
9 *Rosales v. INS*, 331 F.3d 297, 305 (2d Cir. 2003). This Court reviews the agency’s factual  
10 findings, including adverse credibility determinations, under the substantial evidence standard.  
11 *See, e.g., Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004). Nevertheless, “the fact  
12 that the [agency] has relied primarily on credibility grounds in dismissing an asylum application  
13 cannot insulate the decision from review.” *Ramsameachire v. Ashcroft*, 357 F.3d 169, 178 (2d  
14 Cir. 2004). An adverse credibility determination must be based on “specific, cogent reasons” that  
15 “bear a legitimate nexus” to the finding. *Secaida-Rosales*, 331 F.3d at 307.

16 The IJ’s decision, which was speculative and conjectural, was not supported by  
17 substantial evidence. Without any basis in the record for doing so, the IJ hypothesized an  
18 economic motive for Weng’s departure from China and grounded his conclusion on conjecture.  
19 The IJ’s findings are a product of the IJ’s own beliefs about what is and is not plausible in China,  
20 without any basis in the record. The IJ’s findings are riddled with improper assumptions. For  
21 example, the IJ determined that it was implausible that Weng would quit his job to hide his wife  
22 when he discovered that his wife was pregnant because most people would want to save money

1 expecting a new child instead of protecting the unborn fetus from a forced abortion. Also, the IJ  
2 believed, on no basis other than personal views, that Weng was not sufficiently concerned about  
3 his wife's situation in China.

4 Moreover, the IJ's findings with regard to Weng's corroborative evidence and  
5 background materials are not supported by substantial evidence. The IJ's conclusion, that the  
6 State Department Report focuses more on voluntary abortions than on forcible abortions, and  
7 thus gives the impression that voluntary abortions occur more frequently, is factually incorrect.  
8 As a result of this erroneous finding, the IJ speculated that Weng's wife's abortion must have  
9 been voluntary. Additionally, the documents Weng submitted support his testimony that he and  
10 his wife agreed not to have children because of an agreement they made with the Chinese  
11 government. The fact that these documents do not corroborate Weng's testimony, that his wife  
12 was forcibly aborted, do not make them contradictory.

13 \_\_\_\_\_ Finally, the IJ found that the abortion certificate, which he noted is the only evidence in  
14 the record to prove that Weng's wife was forcibly aborted was not authenticated. In *Cao He Lin*  
15 *v. U.S. Dep't of Justice*, 428 F.3d 391, 404-05 (2d Cir. 2005), we explained that 8 C.F.R. § 287.6  
16 is not the exclusive means of authenticating records before an IJ, partly because "asylum  
17 applicants cannot always reasonably be expected to have an authentic document from an alleged  
18 persecutor." *Id.* (citing *Gui Cun Liu v Ashcroft*, 372 F.3d 529, 532 (3d Cir. 2004)). The  
19 documents noted by the IJ as missing, are not documents that could be obtained easily by Weng  
20 in the United States. Furthermore, with regard to the abortion certificate, the IJ did not explain  
21 what he believed would have been appropriate in order to authenticate the document.

22 Weng's withholding of removal and CAT claims are substantially linked to his claim for

asylum; therefore, his withholding and CAT claims are remanded as well.

For the foregoing reasons, the petition for review is GRANTED, the BIA's decision in VACATED, and the case is REMANDED to the BIA for further proceedings consistent with this decision. Having completed our review, any stay of removal that the Court previously granted in this petition is VACATED, and any pending motion for a stay of removal in this petition is DENIED as moot. Any pending request for oral argument in this petition is DENIED in accordance with Federal Rule of Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

FOR THE COURT:

Roseann B. MacKechnie, Clerk

By: \_\_\_\_\_